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OFFICE OF PETITIONS

In re Application of :
Francis L. Garing :
Application No. 10/804,571 : DECISION ON PETITION
Filed: 19 March, 2004 :
Atty Docket No. DEKA:319US :

This is a decision on the petition filed on 30 September, 2005, under 37 CFR 1.53(e), which is treated as a petition to accord the above-identified application a filing date of 19 March, 2004.

The petition is **GRANTED**.

On 19 March, 2004, the application was deposited without drawings.

On 3 March, 2005, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that the application had been deposited without drawings, and that application should reconsider whether drawings were necessary under 35 U.S.C. § 113 (first sentence). The Notice stated that the filing date would be the date of receipt of the missing drawings. The Notice also indicated that the statutory basic filing fee, an oath or declaration, and the surcharge for their late filing were also required.

In response, on 30 September, 2005, the present petition was filed. Petitioner concedes that no sheets of drawings have been filed, but state that drawings are not required because the application contains at least one process claim.

It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention

under 35 U.S.C. 113 (first sentence).¹ A review of the record reveals that Claims 15, 16, and 17 are process claims and Claims 19-23 are method claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

Since the petition was necessitated by an error on the part of the USPTO, the petition fee submitted with the present petition is unnecessary and will be credited to counsel's deposit account, No. 50-1212, as authorized in the present petition.

The "Notice of Incomplete Nonprovisional Application" mailed on 3 March, 2005, was sent in error and is hereby vacated to the extent that it stated that the application was incomplete.

Receipt of the declaration, basic filing fee, surcharge, additional claim fee(s), and preliminary amendment is acknowledged.

The application will be processed and examined using the papers filed on 19 March, 2004 as the original disclosure.

The application is being referred to Initial Patent Examination Division for further processing with a filing date of 19 March, 2004, using only the application papers filed on that date.

Telephone inquiries should be directed to the undersigned at 571-272-3231.



Douglas I. Wood
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Office of Petitions

¹ MPEP 601.01(f).